IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1970 OF 2003
IN
SUIT NO.1953 OF 2003

Surya Prakash S. Mishra ....Plaintiff
V/s.
Chhagan C. Singh & Ors. ....Defendants

Mr.Diwakar Dwivedi for the Plaintiff.
Ms.Pallavi Ghalsashi for Defendant No.2.

CORAM : S.J. VAZIFDAR, J.
DATED : 24TH NOVEMBER, 2005.

P.C. :

1. The suit is filed for a declaration that certain documents executed between Defendant Nos.1 and 2 inter-se are fabricated, invalid and unenforceable. The suit is also filed for a declaration that the consent terms dated 30th September, 1999 before the District Consumer Forum, Dadar and an agreement for sale dated 29th September, 1999 entered into between the Plaintiff and Defendant No.1 in respect of the suit premises is valid, subsisting and binding on Defendant No.1. The Plaintiff has also prayed for possession of the suit flat.

2. By the said consent terms, Defendant No.1

offered another flat mentioned in the Deed of Rectification in lieu of a flat agreed to be sold. Clause 3 of the said consent terms expressly provides that in the event of Defendant failing to comply with the terms and conditions of the enclosed agreement, the same can be enforced as the consent decree.

3. Mr.Dwivedi, the learned counsel appearing on behalf of the Plaintiff states that execution proceedings have already been adopted before the District Consumer Forum and a warrant has been issued. It would be appropriate therefore in the first instance for the Plaintiff to exhaust his remedy by enforcing the consent terms as provided in the said consent terms. This is in terms of the order stated to have been passed. It would be open for the Plaintiff in this proceeding to apply for interim reliefs including against Defendant No.2.

4. With the above observations and with liberty to the Plaintiff to apply, the Notice of Motion is disposed of.